

### **III. Remarks**

The status of the claims is set forth in the above listing of the claims. Claims 1-24 were cancelled and claims 25-46 were added in the previous Response to Office Action. No claims were added or cancelled. Claim 25 was amended. Thus, claims 25-46 are currently pending. Pursuant to the remarks and arguments below, the Applicant respectfully requests allowance of all pending claims.

The Office Action indicates that claims 25-47 are rejected under 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. The Office Action also indicates that claims 25-47 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Pat. No. 5,252,537 to DeWinter-Scaileur (*DeWinter-Scaileur*) and U.S. Pat. No. 5,677,019 to Carstairs et al. (*Carstairs*).

### **IV. Arguments**

#### Claim Rejections Under 35 U.S.C. § 112

The Office Action indicates that claims 25-47 are rejected because the term “substantially evaporated” of independent claim 25 appears to be new matter. Although the Applicant respectfully disagrees that the term “substantially evaporated” is new matter, the term “substantially” was removed from independent claim 25 in the interest of expedited allowance. Removal of the term “substantially” does not limit the scope of the claim and one of ordinary skill in the art would understand that the term “evaporated” in amended independent claim 25 should not be exclusively construed to mean completely or absolutely evaporated. One of ordinary skill in the art would understand that the term “evaporated” may refer to completely or absolutely evaporated (see e.g., Specification [0078]) and may also refer to nearly evaporated or the “evaporation of the majority of the solvent” (see e.g., Specification [0077]).

#### Claim Rejections Under 35 U.S.C. § 103(a)

Amended independent claim 25 recites a method for preserving flowers comprising first, second, and third “dehydrating steps... comprising filling the supporting device with flowers;”

“placing the supporting device into a reactor;” “filling the reactor with a [] mixture until the flowers are substantially immersed in the [] mixture, the [] mixture comprising a first water-miscible solvent and water, wherein the first water-miscible solvent comprises more than [a certain percentage, depending on the first, second, or third step] of the first mixture;” “maintaining the first mixture at a temperature between approximately room temperature and 100°C for the time period, the time period comprising approximately at least thirty minutes;” and “extracting the first mixture from the reactor”.

The Applicant respectfully disagrees that *DeWinter-Scaileteur* teaches two dehydration steps.<sup>1</sup> Assuming *arguendo* that *DeWinter-Scaileteur* does teach two dehydration steps, the Applicant submits that this reference does not teach the three dehydration steps taught in the present claims. The examiner agrees that, at a minimum, *DeWinter-Scaileteur* fails to teach or suggest three dehydration steps,<sup>2</sup> but has indicated that the Applicant has not provided any evidence or a showing that the method claimed by independent claim 25 has advantages over the one (or, as the examiner asserts, possibly two) step dehydration process taught by *DeWinter-Scaileteur*. Thus, as discussed with the examiner during the call on February 2, 2010, Applicant is submitting a declaration containing objective evidence for nonobviousness under 37 CFR 1.132. the results of the experimental procedure included in Annex A and Annex B of the declaration are greater than those which would have been expected from the prior art and, as can be seen in the Figures and discussion of Annex A and B, the results are of a significant, practical advantage: obtaining substantially colorless flowers, obtaining flowers with lower moisture content,

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<sup>1</sup> The Applicant maintains that dehydration disclosed in column 2 lines 7-12 is a summary of the dehydration disclosed at column 3 lines 21-29. The dehydration discussed in column 2 lines 7-12 also refers to a molecular sieve (see column 2 lines 12-20) and to a subsequent infiltration stage (see column 2 line 10). This is the same dehydration disclosed at column 3 lines 21-29. Please also note that column 3 lines 21-20 refers to, “a dehydration stage” and not multiple dehydration stages. Similarly, column 3 lines 21-29 give no indication that the flowers undergo multiple dehydration stages, but instead refers to leaving the solvent to act for at least 12 hours and, at the end of dehydration, moving the flowers to a new receptacle for infiltration.

<sup>2</sup> See Office Action, p. 4-5.

reducing solvent consumption, all resulting in the obtained flowers having a dramatically more fresh and realistic appearance.

Three dehydration steps, as opposed to one or two, allow for a substantial removal of the soluble natural substances, allowing for a better preservation process.<sup>3</sup> Also, because the soluble natural substances are substantially removed, the flowers obtained using this process last longer.<sup>4</sup> In addition, the cost is three times lower because the alcohol resulting from the third step may be used in the second step of another batch and the alcohol resulting from the second step may be used in the first step of another batch. Thus, performing the dehydration in three-steps results in lower cost, greater efficiency, lower environmental impact, and better results than can be obtained in one-step.

The Office Action indicates that *DeWinter-Scaitleur* teaches that natural flowers undergo a dehydration stage involving the exposure of organic solvents to the flowers in order to make the flowers transparent and colorless, but Applicant has provided support that it is impossible to obtain clear or white flowers using one-step dehydration in the Declaration, at least in Annex A.

The Applicant also respectfully submits, particularly in light of the results obtained during the experiment discussed in the Declaration and Annexes, that even if alcohol were used by the *DeWinter-Scaitleur* process, the quality of the flowers obtained using the methods recited in independent claim 25 dramatically exceed the quality of the flowers obtained using the *DeWinter-Scaitleur* process. Thus, it would not have been obvious to combine the teachings of *DeWinter-Scaitleur* with the teachings of *Carstairs* to achieve the dramatically different results of the method recited by the present claims. In addition, as previously asserted, *Carstairs* preserves a plant's natural color, while the instant claims relate to removing all natural pigments

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<sup>3</sup> See, para. 67, "After this time, virtually all of the water initially contained in the flowers has been replaced by an alcoholic solvent, with dehydration causing no change in the flowers shape, as its structure remains intact."

<sup>4</sup> See, para. 1, "The flowers obtained using the process of the present invention last longer as they are not impaired by microorganisms since water contained in cells has been replaced by other substance(s) thus inhibiting microorganism growth."

in order to dye flowers with other colors. Support for the removal of all natural pigments is included in the Declaration, particularly in Annex A.

For at least the above reasons and the reasons disclosed in the Declaration and Annexes, Applicant respectfully submits that amended independent claim 25 is allowable under 35 U.S.C. § 103(a) over *Carstairs* and *DeWinter-Scailteur* and under 35 U.S.C. § 112. Dependent claims 26-47 depend from independent claim 25. Since these claims further limit a patentably distinct independent claim, the dependent claims are allowable on that basis as well as based on the additional patentably distinct limitations that they provide.

Applicant also would like to note that this patent has been granted in Europe under the patent number 1614350 and in Colombia under the patent number 28878.

**V. EXAMINER INTERVIEW SUMMARY**

Pursuant to 37 CFR 1.133(b), Applicant provides the following written statement regarding the substance of the telephone interview conducted on February 2, 2010 among Examiner Pryor, and the attorneys for Applicants, Charles Yang and Mackenzie M. DeWerff.

The interview focused on the possibility of presenting additional evidence in the form of a declaration.

**VI. Conclusion**

In view of the foregoing amendments and remarks, it is respectfully submitted that this application is in condition for allowance. If any additional fees are required to complete this filing, or if an overpayment has occurred, the Commissioner is authorized to charge or credit such amount to Deposit Account No. 13-0480, referencing Attorney Docket No. 09163000.110000. The Examiner is cordially invited to contact the undersigned Attorney of Record if such would expedite the prosecution of this Application.

Respectfully submitted,

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/Brian C. McCormack, 36,601/

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